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Family Name						
Given Names						
Student Number						
Teaching Period	Semester 1, 2017					

FINAL EXAMINATION	DURATION
LAW514 – Commercial Law	
	Reading Time: 10 minutes
	Writing Time: 180 minutes

INSTRUCTIONS TO CANDIDATES

Total marks for this exam: 50 marks.

This exam contains five (5) legal problem solving questions. Each question is worth 10 marks and you must answer each question (**total of 50 marks**).

Identify and discuss all relevant issues and refer to legislation and/or case law to justify your answers.

EXAM CONDITIONS

You may begin writing from the commencement of the examination session. The reading time indicated above is provided as a guide only. The overall time for this exam is 3 hours (plus the extra 10 minutes reading time).

This is an OPEN BOOK examination

Any calculator is permitted

Any handwritten material is permitted

Any hard copy, English dictionary is permitted (annotated allowed)

ADDITIONAL AUTHORISED MATERIALS	EXAMINATION MATERIALS TO BE SUPPLIED
Any printed material with the exception of CDU Library books	1 x 20 Page Book

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DOUBLE SIDED.**

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Problem-solving Questions

Total Marks for this section: 50

All questions should be answered in the Answer Booklet provided.

There are 10 marks for each question. You should aim to write approximately 2-3 pages for each question.

Suggested time to allocate to each question is approximately 35 minutes.

Question 1 [10 marks]

Joanne wanted to purchase a new computer so she walked into a computer shop to get some advice as to the best one to buy. The salesman persuaded her to buy the most expensive model in the shop even though he knew she probably didn't need it based on what she had told him. The cost of the computer was \$2,300 but when the salesman handed back her credit card receipt, it read "\$2,800", not \$2,300. The salesman immediately realised that Joanne had paid \$500 too much but didn't notice. He made a decision on the spot not to draw this to her attention. When Joanne got home, however, she realised she might have paid too much for the computer and telephoned the store to inquire why her receipt said \$2,800 when she understood the price was \$2,300. The manager answered the phone and said he would make inquiries and 'get back to her'. But he did not get back to her.

Was this a valid contract? Give your reasons why or why not. What would be a suitable remedy in this situation? Your answer must refer to the relevant case law. (N.B. You are not required to use Consumer Law in your answer).

Question 2 [Total 10 Marks]

Some years later Joanne, now aged 90, was writing her last Will and Testament (Will). Her grandson, Freddy (aged in his mid-30s), whom she hadn't seen for many years, knew she wasn't well and came to visit her. He convinced her to change her Will so he would be left with her house – instead of her original intention of leaving the house to her three children (who were all by now in their mid- to late-60s). Freddy convinced her that they didn't need the house as much as he did. For example, it would have to be divided into three and they already had their own homes. Although there were several other grandchildren, they were all much better off than him. He pressed her about how difficult it would be for him to ever purchase his own home and that he had *no chance* without her help. He convinced her that he was the neediest of all Joanne's extended family. By this time Joanne was too old and frail to oppose him; her eyesight was poor and she trusted Freddy who also convinced her to sign a cheque which she thought was to be used to pay for her electricity bill. It turned out the cheque was a payment of \$5,000 to Freddy.

Identify and discuss any issues of genuine consent in the above scenario. Refer to relevant contract law cases to support your answer. (N.B. You do not need to refer to Succession Law in your answer).

(Question 3 is on the next page)...

Question 3 [10 marks]

Abdul is the owner of a fine Turkish and middle-eastern carpet store. Firhana has been employed by Abdul as the store manager and principal salesperson for the past 4 years. One day, Rasheed is shopping for special hand-woven carpets and finds a particularly spectacular one amongst the many carpets on display in Abdul's store. He starts negotiating with Firhana. Firhana has been specifically instructed by Abdul to not to sell that particular carpet for anything under \$7,000. Nevertheless, after 30 minutes of bartering, Rasheed manages to persuade Firhana to sell that carpet to him for only \$5,500 as he did not want any of the other carpets and was prepared to pay the full amount on the spot. The next day, however, upon discovering that Firhana had disobeyed his instructions and sold the special carpet to Rasheed for only \$5,500, Abdul immediately calls Rasheed and insists that he return the carpet or pay the extra \$1,500.

Is Abdul legally entitled to do this? Your answer must refer to the relevant case law. (N.B. You are not required to use contract law or consumer protection law in your answer.)

Question 4 [10 marks]

Rajeev was interested in buying a cafe business in Darwin's CBD. He visited one cafe called 'Best Espresso' and spoke to the owner (Nicky) who showed him around the cafe and kitchen area where the chefs made coffee and prepared light meals. Rajeev could see the potential in this business and he counted 6 tables outside the cafe with enough seating for 24 customers and seven tables on the inside with seating for 30 customers. The cafe also displayed a colourful sign outside showing the café's name and businesses logo which impressed Rajeev. He decided to purchase the business after consulting his accountant who thought it would be profitable.

It was the middle of summer and most days the temperature was around 34 degrees. After Rajeev's first full month of operations, he was making a nice profit. This followed his introduction of iced-coffees and fresh-fruit 'smoothies' to the drinks menu. The following month, however, Rajeev received a letter from the Local Government informing him that he had to remove the outside tables as his cafe never had permission for these. The loss of 24 seats meant he would lose at least 33% of his trade and could kill his business.

It had cost Rajeev \$7,000 to decorate his new cafe and his running expenses (including part-time salaries) are \$5,000 a week. If he could use all the tables, he could make a profit, but losing the outside tables means running at a loss.

Should Rajeev refer this matter to the ACCC? Has Nicky done anything wrong and, if so, would she have any defences? What remedies (if any) may be available to Rajeev under the Australian Consumer Law. Refer to any important sections of the Act and relevant cases to support your answer. (NB. This question does not require students to use contract law).

Question 5 [10 marks]

Asif drives a taxi for his uncle's taxi company. His shift starts at 12 midnight and it is common for him to receive radio calls giving instructions about where to collect passengers and where they are to be driven. One evening, Asif received such a radio message and was momentarily distracted as he was unfamiliar with the location and did not see a pedestrian who wandered

onto the road in front of his taxi. He was not driving fast and it was a poorly lit street. The pedestrian was drunk. But Asif definitely ran over him. An ambulance was immediately called and the pedestrian suffered 3 broken ribs and a broken leg in addition to deep bruising on his body.

Can the pedestrian sue Asif in tort law for negligence? Can Asif argue that there is contributory negligence? In your legal opinion who is more likely to win this case and why? Use the relevant tort law cases to support your answers.

-----End of Exam-----